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| <p>UNITED STATES OF AMERICA</p> <p>v.</p> <p>MOHAMMED KAMIN</p> | <p>GOVERNMENT MOTION</p> <p>For Appropriate Relief</p> <p>23 January 2009</p> |
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1. **Timeliness:** This motion is timely filed.
2. **Relief Requested:** In the interests of justice, and at the direction of the President of the United States and the Secretary of Defense, the Government respectfully requests the Military Commission grant a continuance of the proceedings in the above-captioned case until 20 May 2009.¹
3. **Overview:** In order to provide the President and his Administration time to review the military commissions process generally, and the cases pending before military commissions specifically, the Secretary of Defense has, by order of the President, directed the Chief Prosecutor to seek continuances of 120 days in all pending cases.
4. **Burden and Persuasion:** As the moving party, the Government bears the burden of persuasion. *See* RMC 905(c).
5. **Facts:**
 - a. On 20 January 2009, Barack H. Obama took office as President of the United States. As such, President Obama is the Commander-in-Chief of the United States Armed Forces. The Honorable Robert Gates continues to serve as the Secretary of Defense.
 - b. On 22 January 2009, President Obama issued an Executive Order, "Review and Disposition of Individuals Detained at the Guantanamo Bay Naval Base and Closure of Detention Facilities," (EO) (Attachment A). The EO ordered an inter-agency Review of "the status of each individual currently detained at Guantanamo" and directed the Secretary of Defense to "ensure that during the pendency of the Review... no charges are sworn, or referred to a military commission ... and that all proceedings of such military commissions to which charges have been referred but in which no judgment has been rendered... are halted."

¹ The Government will be requesting a continuance until on or about 20 May 2009 in all pending military commissions cases.

c. By order of the President, the Secretary of Defense directed the Chief Prosecutor of the Office of Military Commissions to seek continuances of 120 days in any case that had been referred to military commission, in order to provide the Administration sufficient time to conduct a review of detainees currently held at Guantánamo Bay, Cuba (Attachment B).

6. Argument:

a. Rule for Military Commission (RMC) 707(b)(4)(E)(i) authorizes the military judge of a military commission to grant a continuance of the proceedings if the interests of justice are served by such action and outweigh the best interests of both the public and the accused in a prompt trial of the accused.

b. The requested continuance is in the interests of justice, as it will permit the President and his Administration to undertake a thorough review of all pending cases and the military commissions process generally.

c. The interests of justice served by granting the continuance outweigh the interests of both the public and the accused in a prompt trial. Granting a continuance of the proceedings is in the interests of the accused and the public, as the Administration's review of the commissions process and its pending cases might result in changes that would (1) render moot any proceedings conducted during the review; (2) necessitate re-litigation of issues; or (3) produce legal consequences affecting the options available to the Administration following its review. Further, changes in the military commissions procedures that could result from a review of the commissions process might inure to the benefit of the accused.

d. The Government requests a halt to this military commission and a temporary stay of all orders previously issued. During this continuance the requirements of previously ruled upon motions should be stayed, compliance dates readjusted appropriately, and all other proceedings halted to comport with the President's intent and this commission's ruling.

7. Conclusion: For the foregoing reasons, the military commission should grant a continuance of further proceedings in the above-captioned case until 20 May 2009, and adopt the attached Findings of Fact, Conclusions of Law and Order.

8. Oral Argument: The Government does not request oral argument, but is prepared to argue should the commission find it helpful.

9. Witnesses and Evidence: No witnesses or evidence are necessary to decide this motion.

10. Certificate of Conference: The Government has conferred with the Defense and the Defense does not oppose the requested relief.

11. Attachments:

- A. Executive Order
- B. Secretary of Defense Order
- C. Proposed Findings of Fact and Conclusions of Law.

12. **Submitted by:**

//s//
Rachel E. Trest
LT, JAGC, USN
Trial Counsel
Office of Military Commissions
Office of Chief Prosecutor

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//s//
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